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IN THE HIGH COURT OF JUDICATURE AT BOBBY

CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 5885 OF 2006

Vasant G. Jogdand) ... Petitioner

Vs.

State of Maharashtra) ... Respondent.

Mr. S. P. Kanuga with Mr. H.P. Vyas, Advocates for the petitioner

Mrs. S.S. Bhende, AGP for for respondent Nos.1 to 3.

CORAM: F.I. REBELLO,
AND
R. V. MORE, JJ.

DATE : JANUARY 19, 2007.

P.C.:

. Heard. Rule. Rule made returnable forthwith.

2. Petitioner has approached this court against the impugned order dated 23rd March 2004 of the Food Distribution Officer and the order 21st August 2006 of the Revisional Authority. The case of the petitioner is that before passing the order, the Food Grains Distribution Officer did not consider the various contentions urged on

behalf of the petitioner. It is further pointed out that in revision the Revisional Authority failed to exercise jurisdiction also on that count while passing the order. Apart from that the Revisional Authority has passed an order which was not the subject matter of the revision application and it is clearly therefore, without jurisdiction.

3. Petitioner was holding an authorised ration shop. On a check, it was found that food grains meant to be distributed in the fair price shop were found sold in places other than the fair price shop. The statement of the manager of the petitioner Amrutlal Kashmirilal Agarwal was recorded. The petitioner was given a show cause notice and thereafter the impugned order came to be passed. The Food Grains Distribution Officer found that there were discrepancies in the stock register and the balance found, when the panchanama was carried out. It was further observed that a jeep was caught and seized where food grains were being taken for illegal sale. The BPL wheat was weighing 6500 Kg. Also from the receipt book out of 6500 Kg. the sale receipt was for Rs.3180 Kg. only. It was found that,

therefore, there was misappropriation. The explanation given by the petitioner was set out. It was pointed out that signature / thumb impression of the ration card holder was not there on the receipts. The explanation of the petitioner was then set out. It was next pointed out that the authorised rationing shop could be run by the licence holder solely, but in the instant case, conducting right was given to one Amritlal Kashmirilal Agarwal, and therefore, it was observed that there was illegal transfer of licence. The explanation of the petitioner is that Agarwal was kept as servant. Three further points in respect of which notice was given were that i) the food grains purchased under the government scheme were taken to flour mill and for illegal sale; ii) stock of 30 bags containing 50 Kg. wheat each were being carried from the ration shop; iii) false accounts of government food grains scheme were kept and the reference ledger of which the food grains shop, is not kept. The explanation of the petitioner is also set out and based upon that the food gains distribution officer passed an order, forfeiting security deposit and cancelling the licence of authorised

ration shop.

4. Revision was preferred before the Revisional Authority. Revisional Authority considered various contentions raised and the arguments advanced and held that the decision was based on the statements and documents available. There was no cause for interfering with the order passed and the explanation given by the petitioner was unreliable and accordingly dismissed the Revision Application but at the same time passed further direction to recover a sum of Rs.58,000/- in terms of direction (3) from the order of the petitioner.

5. We have heard the learned counsel for the petitioner. It is the case of the petitioner himself that Amritlal Agarwal is his employee / servant. If that be the case, the authorities below cannot be faulted for relying on the said statement. It would be clear from the said statement of Amritlal that authorised food grains meant to be sold in the authorised food grains shop, were taken in jeep. Under these circumstances, the conclusions arrived at by the

Food Grains Distribution Officer, nor the order passed in the revision, can be faulted. There is no perversity in the finding of fact, nor decision / order suffers from any error, apparent on the face of the record.

6. Another point is in, giving direction to recover an amount of Rs.58,000/- from the petitioner. That would be without jurisdiction as that was not the subject matter of the show cause notice to the petitioner, nor State had preferred any revision against the order of the Food Grains Distribution Officer.

7. In the light of that,order dated 21st August 2006 is partially modified to the extent that the order directing recovery of Rs.58,000/- is set aside. With the above observation, rule is made partly absolute accordingly. There shall be no orders as to costs.

Sd/- Sd/-

[R.V. MORE, J.] **[F.I. REBELLO, J.]**